

FEDERAL ELECTION COMMISSION
999 E Street N.W.
Washington, D.C. 20463

2013 FEB -5 PM 5:49

CELA

FIRST GENERAL COUNSEL'S REPORT

MUR 6627

COMPLAINT RECEIVED: 08/15/2012

NOTIFICATION DATE: 08/22/2012

RESPONSES RECEIVED: 09/10/12, 09/14/2012,
09/26/12, 10/01/12, and 10/05/12

SUPPLEMENTAL INFORMATION: 09/10/12

DATE ACTIVATED: 11/07/2012

EXPIRATION OF SOL: (earliest) 10/30/2016
(latest) 10/15/2017

COMPLAINANT:

Thomas Shane Stilson

RESPONDENTS:

Mike Moon for Congress and Craig Comstock
in his official capacity as treasurer

C. Michael Moon

Journal Broadcast Group

Common Sense Exchange d/b/a

Rally for Common Sense

Matthew Canovi

Canovi & Associates, LLC

Jonica Hope

Bob Estep

Eric Wilber

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 434(b)

2 U.S.C. § 441a

2 U.S.C. § 441b(a)

2 U.S.C. § 441d

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

FEC Database

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

C. Michael Moon was a candidate in the 2012 Republican primary in the Missouri seventh congressional district. His principal campaign committee is Mike Moon for Congress and Craig Comstock in his official capacity as treasurer (the "Committee").¹

The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations in connection with (1) Moon's acceptance of in-kind contributions resulting from his appearances on a weekly radio program, "The Gun Show;" (2) Moon's acceptance of in-kind contributions resulting from the waiver or payment by a third party of a \$1,000 booth rental fee at a rally; (3) the Committee's failure to comply with reporting and disclaimer requirements on campaign literature and signage; (4) the Committee's failure to report other alleged in-kind contributions, including the costs of signs and an iPad; and (5) the Committee or a third party's failure to report the costs of a pro-Moon newspaper advertisement and the failure to include a disclaimer on the advertisement.

Separate responses were filed by Moon, the Committee, Matthew Canovi of Canovi & Associates, LLC ("Canovi"), Journal Broadcast Group ("Journal Broadcast"), Bob Estep ("Estep"), and Eric Wilber ("Wilber"). *See* Moon Resp. (Sept. 10, 2012), Committee Resp. (Sept. 10, 2012), Canovi Resp. (Sept. 27, 2012), Journal Broadcast Resp. (Oct. 1, 2012), Estep

¹ The Committee's 2012 reports indicate that it received \$16,146.40 in receipts and made disbursements totaling \$16,146.40 during the same election cycle. *See* October 2012 Quarterly Report (Summary Page) (Oct. 15, 2012).

The Committee was also Moon's principal campaign committee for his 2010 candidacy in the same congressional district. Although Moon did not file a new Statement of Candidacy for 2012, the Committee's 2011 Year-End Report contained a notation that "Candidate declared to run in 2012 primary in October 2011. Started new election totals." *See* Committee's 2011 Year-End Report, Summary Page (Jan. 13, 2012). On August 8, 2012, the Reports Analysis Division ("RAD") sent Moon a letter advising him that he should either disavow a 2012 candidacy or file a 2012 Statement of Candidacy. Moon did not respond to the RAD letter.

"If the individual does not respond to the disavowal letter within 30 calendar days, he or she will be considered a candidate under the Act."

1 Resp. (Sept. 10, 2012), and Wilber Resp. (Sept. 17, 2012). As detailed below, we recommend
2 that the Commission find no reason to believe that Respondents violated the Act by making or
3 accepting excessive or prohibited in-kind corporate contributions, by failing to properly report
4 the receipt of various in-kind contributions, and by failing to affix the appropriate disclaimer to
5 window decals. We further recommend that the Commission dismiss, as a matter of
6 prosecutorial discretion, various allegations relating to the receipt of a \$1,000 prohibited in-kind
7 corporate contribution and missing or incomplete disclaimers pursuant to *Heckler v. Chaney* 470
8 U.S. 821 (1985).

9 II. FACTUAL AND LEGAL ANALYSIS

10 A. Radio Show

11 Beginning in May 2011 (several months prior to Moon becoming a candidate), and
12 continuing after his loss in the August 2012 Republican primary, Moon regularly appeared as a
13 political commentator on "The Gun Show," a weekly two-hour radio program hosted by Canovi.
14 Moon Resp. at 1; Canovi Resp. at 1. The show is broadcast on 104.1 KSGF-FM ("KSGF"), a
15 Springfield, Missouri radio station owned by Journal Broadcast. Journal Broadcast Resp. at 1.
16 Moon's participation on "The Gun Show" typically was limited to approximately five minutes of
17 airtime in the second hour of the show, with the last two or three minutes allotted for political
18 commentary.² Moon Resp. at 1.

19 The Complaint alleges that the radio show appearances constitute unreported in-kind
20 contributions because Canovi and Moon advocated Moon's election and solicited contributions
21 for his campaign. Compl. at 1. Moon acknowledges that his commentary was political in nature
22 and that, although he periodically mentioned his candidacy, he did not do so in every appearance.

² Moon states that the first hour of "The Gun Show" involved discussions of the latest advances in firearms (or the specific topic of the day) and the second hour involved a discussion of Second Amendment issues. *Id.*

1 Moon Resp. at 1. Moon further states that he did not provide his usual commentary on June 9,
2 2012, when he hosted "The Gun Show" in Canovi's absence. *Id.* According to Moon, there was
3 one mention of his Committee's website and one mention of an upcoming campaign rally. *Id.*
4 He denies soliciting contributions during his appearances on "The Gun Show." *Id.* Canovi
5 confirms that Moon was a political commentator during the second hour of "The Gun Show"
6 before, during, and after Moon's candidacy.³ Canovi Resp. at 1.

7 Journal Broadcast states that it is the licensee of KSGF and that "The Gun Show" is
8 independently produced and hosted on airtime sold to Canovi, an unrelated third party.⁴ Journal
9 Broadcast Resp. at 2. Journal Broadcast further states that Canovi is not an employee of either
10 KSGF or Journal Broadcast and that he purchases two hours of airtime on KSGF at the same
11 market rate that the station sells time for more traditional advertisements.⁵ *Id.* Journal Broadcast
12 provides a staff person to operate the radio control board during the broadcast of "The Gun
13 Show," which is included in the cost of the airtime, but Journal Broadcast has no involvement
14 with the show's content.⁶ *Id.*

³ It appears that "The Gun Show" is independently produced and owned by Canovi who operates a company, Canovi & Associates, LLC. Canovi also has other business enterprises operating within his company such as teaching "defensive shooting programs" and publishing a newsletter. See <http://www.mattcanovi.com> (last accessed January 22, 2013). The available information indicates that Canovi is the sole owner of Canovi & Associates. There is no information to indicate that Moon receives any type of compensation from Canovi or Journal Broadcast for his hosting duties.

⁴ The sole shareholder of Journal Broadcast Group is Journal Broadcast Corporation which operates as a subsidiary of Journal Communications, Inc. *Id.*, see also <http://www.journalbroadcastgroup.com> (last accessed on January 22, 2013). Journal Communications, Inc. owns 35 radio stations and 15 television stations in 12 states as well as the Milwaukee Journal Sentinel and the Journal Community Publishing Group. See <http://www.journalcommunications.com> (last accessed on January 22, 2013).

⁵ Complainant asserts that Canovi pays \$250 per hour for the airtime, or \$1,000 per month. Compl. at 2.

⁶ Journal Broadcast further responds that the Complaint does not allege a violation on its part and further denies that it has made any contributions to Moon's campaign or that it has any materials relevant to the Complaint. *Id.* at 3. It requests that the Commission dismiss it as a Respondent in the matter. *Id.*

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1 The Complainant supplemented the initial allegation with information relating to
2 archived podcasts of 38 airings of "The Gun Show" between October 16, 2011, and August 4,
3 2012.⁷ See Compl. Suppl. (Sept. 11, 2012). Our review of the available podcasts indicates that
4 Moon appeared on 28 of the 34 shows aired during his candidacy and that Moon and Canovi
5 either referred listeners to the Committee's website or encouraged listeners to support Moon's
6 candidacy during 19 of those 28 shows. *Id.* During three of those 19 shows that referenced
7 Moon's candidacy, Moon and Canovi also solicited financial support for Moon's campaign or
8 Canovi encouraged listeners to contribute to Moon's campaign by asking listeners to support
9 "like-minded" candidates. *Id.* (claiming that solicitations took place on February 25, April 28,
10 and June 23, 2012). The Supplement also asserts that, from the inception of the campaign, Moon
11 placed campaign material, at no charge, in every one of the electronic newsletters distributed by
12 Canovi; the Complaint alleges that the Committee failed to report the receipt of an in-kind
13 contribution from Canovi and failed to place a proper disclaimer on the advertisement.⁸ *Id.* at 3.

14 The Act prohibits corporations from making contributions to federal candidates or their
15 committees. 2 U.S.C. § 441b(a). The Act also prohibits an individual from making a
16 contribution to a candidate or authorized political committee in any calendar year which

⁷ Although Complainant refers to Moon as Canovi's co-host, the podcasts indicate that Moon generally provided political commentary during the last five minutes of the show rather than being present and involved in the discussions during the remainder of the Show. However, there are a few instances when Moon appeared on the show and participated in the general discussion. See *generally* Compl. Suppl.

⁸ Moon did not specifically respond to the allegation regarding the newsletter and Canovi responded that he was unclear as to how to respond to the information contained in the Supplement to the Complaint as it cited to no particular statutory provision. See Moon Resp. at 1-2; Canovi Resp. at 1. It appears that Complainant is alleging that the Committee received an in-kind contribution from Canovi since Canovi sells advertising and sponsorships for the newsletter and failed to place the proper disclaimers on the advertisements. We reviewed the archived newsletters available on Canovi's website, but could not locate any editions that contained any type of Moon advertisements. See <http://www.mattcanovi.com> (last accessed on Jan. 23, 2013). Based on the lack of available information supporting Complainant's allegation, we recommend that the Commission find no reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and 441f by failing to report the receipt of a potentially prohibited in-kind corporate contribution and by failing to place the appropriate disclaimer on the alleged advertisements.

1 aggregates in excess of \$2,500. 11 C.F.R. § 100.52(a) (2012 cycle). "Anything of value"
2 includes an in-kind contribution. 11 C.F.R. §§ 100.52(d)(1), 100.111(a). All political
3 committees are required to file reports of their receipts and disbursements. 2 U.S.C. § 434(a).

4 Contributions do not include are "any cost[s] incurred in covering a news story,
5 commentary or editorial by any broadcasting station (including a cable television operator,
6 programmer or producer), Web site, newspaper, magazine or other periodical publication . . .
7 unless the facility is owned or controlled by any political party, political committee, or
8 candidate[.] 11 C.F.R. § 100.73; *see also* 2 U.S.C. § 431(9)(B)(i) (exempting certain news
9 stories, commentaries, or editorials from the definition of expenditure); 2 U.S.C.
10 § 434(f)(3)(B)(i) (exempting communications within certain new stories, commentaries, or
11 editorials from the definition of electioneering communication). This exclusion is known as the
12 "press exemption."

13 If the press exemption applies to Canovi, there is no resulting in-kind contribution to
14 Moon or the Committee. On the other hand, if the press exemption does not apply to Canovi,
15 Moon's appearances could constitute a prohibited corporate or excessive in-kind contribution to
16 the Committee.⁹

17 The Commission conducts a two-step analysis to determine whether the press exemption
18 applies. First, the Commission asks whether the entity engaging in the activity is a press entity
19 as spelled out in the Act and Commission regulations. *See* Advisory Op. 2005-16 (Fired Up!).
20 Second, in determining the scope of the exemption, the Commission considers (1) whether the
21 press entity is owned or controlled by a political party, political committee, or candidate, and if

⁹ Canovi & Associates is Canovi's limited liability company. Commission regulations provide that, so long as a limited liability company does not opt to be treated like a corporation for tax purposes, a contribution from a limited liability company is treated as a contribution from a partnership. *See* 11 C.F.R. § 110.1(g)(3).

1 not, (2) whether the press entity is acting as a press entity in conducting the activity at issue (*i.e.*,
2 whether the entity is acting in its "legitimate press function"). *See Reader's Digest Association*
3 *v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981). If the press entity is not owned or controlled
4 by any political party, political committee, or candidate, and if it is acting as a press entity with
5 respect to the conduct in question, the press exemption applies and immunizes the activity at
6 issue.

7 In determining whether Canovi & Associates qualifies for the press exemption, we first
8 consider whether it is a press entity. When conducting that analysis, the Commission "has
9 focused on whether the entity in question produces on a regular basis a program that
10 disseminates news stories, commentary, and/or editorials." Advisory Op. 2010-08 (Citizens
11 United).¹⁰ The available information indicates that Canovi & Associates is in the business of
12 producing on a regular, weekly basis a talk radio program discussing issues related to the Second
13 Amendment. It is therefore a press entity. *See* Advisory Op. 2007-20 (XM Satellite Radio, Inc.)
14 and AO 2005-19 (Inside Track) (applying the press exemption to a radio program where the host
15 operated a corporation that produced a show and purchased airtime to broadcast her show). That
16 Canovi has supported Moon's candidacy is irrelevant as "an entity otherwise eligible for the
17 press exemption does not lose its eligibility merely because of a lack of objectivity in a news
18 story, commentary, or editorial." Advisory Op. 2010-08 (Citizens United).

19 We next consider whether the press entity is owned or controlled by a political party,
20 political committee, or candidate. Available information indicates that Canovi & Associates is
21 not owned or controlled by a political committee, political party or candidate. Although Moon
22 regularly appears on "The Gun Show" as a guest, there is no information suggesting that he (or

¹⁰ The Commission has also noted that the "[w]hether an entity qualifies as a press entity does not necessarily turn on the presence or absence of any particular fact." Advisory Op. 2010-08 (Citizens United).

1 any other candidate, committee or political party) has any ownership interest in the entity. All
2 available information indicates that Canovi controls the content of the entire show.

3 We also consider whether the press entity is acting in its legitimate press function with
4 respect to the activity at issue, paying particular attention to whether the materials under
5 consideration are available to the general public and whether they are comparable in form to
6 those ordinarily issued by the entity. Advisory Op. 2010-08 (Citizens United). "The Gun Show"
7 is available to the general public residing in or near Springfield, Missouri, which includes
8 potential voters within Missouri's seventh congressional district. See <http://www.ksgf.com> (last
9 accessed January 22, 2013). Podcasts of "The Gun Show" are also available for download
10 through the radio station's website. See <http://www.ksgf.com/podcasts/thegunshow/> (last
11 accessed February 2, 2013). In addition, a review of the podcasts provided by Complainant
12 indicates that "The Gun Show's" format was similar to those shows ordinarily produced by and
13 paid for by a press entity.

14 Complainant takes issue with the frequency with which Moon appeared on "The Gun
15 Show" and the fact that he and Canovi expressly advocated Moon's candidacy. Compl. at 1;
16 Compl. Suppl. at 1. The Commission, however, has held that intermittent requests for
17 contributions to a candidate's campaign do not foreclose application of the press exemption, as
18 long as the entity is not owned or controlled by a political committee, political party, or a
19 candidate and the entity is not serving as an intermediary for the receipt of the contributions. See
20 Advisory Op. 1980-109 (Ruff Times); see also Advisory Opinion 2008-14 (distinguishing
21 between "regular" and "intermittent" express advocacy and solicitations). It further appears that
22 the Gun Show, for the most part, has consistently followed the same format, which did not
23 include expressly advocating for Moon's candidacy or soliciting contributions to his

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1 Committee.¹¹ *See generally* Compl. Suppl. Since the three solicitations of funds for Moon's
2 candidacy are not a regular, fixed part of "The Gun Show," it does not prevent "The Gun Show"
3 from satisfying the press exemption requirements. Therefore, we conclude that "The Gun Show"
4 was acting in its legitimate press function with regard to Moon's appearances.

5 We thus conclude that Moon's appearances on "The Gun Show" do not constitute
6 excessive or prohibited contributions to the Committee in violation of 2 U.S.C. §§ 441a or 441b.

7 As to Journal Broadcast, the available information indicates that, because Canovi
8 produces "The Gun Show" and maintains control over its content, Journal Broadcast was acting
9 as an entrepreneur and not a press entity exercising its "unfettered right... to cover and comment
10 on political campaigns" when it sold airtime to Canovi & Associates to broadcast "The Gun
11 Show." *See* Advisory Op. 1982-44 (DNC/RNC), citing H.R. Report No. 93-1239, 93d Congress,
12 2d Sess. 4 (1974); *see also* MUR 6089 (Hart) (citing to MUR 5297 (Wolfe) (concluding that the
13 station acted as an entrepreneur, not press entity, when it aired a show hosted by Wolfe because
14 Wolfe paid for the airtime and maintained complete control over the content of the show)).
15 Therefore, we conclude that Journal Broadcast and KSGF have not made any prohibited or
16 excessive in-kind corporate contributions to the Committee in violation of 2 U.S.C. §§ 441a or
17 441b.

¹¹ We note, however, that there was at least one show, and possibly two, that aired during Moon's candidacy where he hosted the entire show. *See* <http://www.ksgf.com/podcasts/thegunshow/158302525.html> (last accessed Jan. 22, 2013). While Complainant alleges that Moon also hosted the June 3, 2012, show in Canovi's absence, we were unable to locate a podcast for this particular show. In addition, there were some shows during his candidacy where Moon's appearance lasted longer than the customary five minutes allotted at the end of the second hour. *See, e.g.,* <http://www.ksgf.com/podcasts/thegunshow/164125606.html> (June 28, 2012) (last accessed Jan. 22, 2013).

In previous MURs, the Commission has held that the press exemption applies in instances where the program format does not change after the individual becomes a candidate. *See* MUR 5555 (Ross) (radio talk show host who became a candidate was eligible for the press exemption where program format did not change after he began to consider candidacy) and MUR 4689 (Dorman) (radio guest-host who later became a candidate was eligible for the press exemption for commentary critical of eventual opponent where there was "no indication that the formats, distribution, or other aspects of production" were any different when the candidate hosted than they were when the regular host was present).

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1 Accordingly, we recommend that the Commission find no reason to believe that Journal
2 Broadcast, Canovi, and Canovi & Associates made and the Committee accepted a prohibited or
3 excessive in-kind corporate contribution based on Moon's appearances on "The Gun Show"
4 during his candidacy in violation of 2 U.S.C. §§ 441a and 441b. We further recommend that the
5 Commission find no reason to believe that that the Committee failed to report such a contribution
6 in violation of 2 U.S.C. § 434(b).

7 **B. The Rally for Common Sense**

8 The Committee had a booth at the May 19, 2012, Rally for Common Sense, which was
9 staged by Common Sense Exchange. The Complaint alleges that Jonica Hope, a Committee
10 volunteer and webmaster for the Rally, may have waived the \$1,000 booth fee for the
11 Committee.¹² Compl. at 2. If Common Sense Exchange made an in-kind contribution, it would
12 have violated 2 U.S.C. § 441b because Common Sense Exchange is non-profit corporation. *See*
13 <http://www.sos.mo.gov/kbimaging/29374539.pdf> (last accessed Feb. 2, 2013). On this basis, the
14 Complaint alleges that the Rally may have made, and the Committee may have accepted and
15 failed to report, a prohibited corporate in-kind contribution from Common Sense Exchange in
16 violation of 2 U.S.C. §§ 441b and 434(b). *Id.*

17 The Committee responds that the July 2012 Quarterly Report does, in fact, contain an un-
18 itemized expenditure totaling \$750 in connection with the Rally. Committee Resp. at 1; Moon
19 Resp. at 2; *see* July 2012 Quarterly Report (Summary Page) (filed on Jul. 14, 2012). Neither
20 response, however, indicates that the \$750 disbursement was for the booth rental fee. *Id.*

¹² CELA attempted to notify Common Sense Exchange on two separate occasions (August 22, 2012, and September 11, 2012) at the same address found on its website, but both packages were returned as undeliverable. It also sent a notification letter to Jonica Hope but did not receive a response from her. *See* Letter to Kim Paris, Common Sense Exchange Rally d/b/a Rally for Common Sense from Jeff Jordan, CELA (Aug. 22, 2012) and (Sept. 11, 2012) (Notification Letters); Letter to Jonica Hope from Jeff Jordan, CELA (Aug. 22, 2012) (Notification Letter).

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1 According to the Committee, it may have "misinterpreted" the filing requirements regarding this
2 expenditure, but it is willing to amend the report to itemize this particular disbursement. *Id.* The
3 meaning of the Committee's statement is unclear. It may indicate that the \$750 expenditure
4 represents the booth rental fee but that the Committee was unaware it was required to itemize the
5 expenditure. The Committee does not, however, address the \$250 difference between the \$1,000
6 fee and the \$750 reported expenditure. Further, the Committee does not dispute the information
7 showing that federal candidates were required to pay \$1,000 for the booth rental. Compl., Ex.
8 A1.

9 Since we were unable to notify Common Sense Exchange and Jonica Hope did not file a
10 response, we cannot determine the reason for the \$250 variance. It is possible that Common
11 Sense Exchange provided a commercially reasonable discount from \$1,000 to \$750, that
12 Common Sense Exchange provided a discount resulting in a \$250 in-kind contribution, or that
13 Common Sense Exchange waived the fee altogether.

14 Regardless, we do not believe that this potential violation warrants further action by the
15 Commission, given the resources that would be necessary to investigate the matter which
16 involves a negligible amount of money. Accordingly, we recommend that the Commission
17 exercise prosecutorial discretion and dismiss the allegation as to Common Sense Exchange, the
18 Committee, Moon, and Hope pursuant to *Heckler v. Chaney*.

19 **C. Committee's Potential Disclaimer and Reporting Violations**

20 The Complaint alleges that the Committee and other individuals failed to comply with the
21 disclaimer requirements of 2 U.S.C. § 441d with regard to several pieces of campaign literature,
22 including: (1) pamphlets; (2) a billboard; (3) an advertisement printed on a tractor trailer;
23 (4) pocket constitutions; and (5) window decals. Compl. at 1-3. Complainant further alleges that

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1 the Committee failed to report the receipt of in-kind contributions and the costs incurred in
2 connection with some of the campaign literature. *Id.*

3 The Act requires a disclaimer whenever a political committee makes a disbursement for
4 the purpose of financing any public communication through any broadcast, cable, satellite
5 communication, newspaper, magazine, outdoor advertising facility, mass mailing, or any other
6 type of general public political advertising. 2 U.S.C. § 441d(a); 11 C.F.R. §§ 100.26, 110.11. A
7 disclaimer is also required for all public communications by any person that expressly advocates
8 the election or defeat of a clearly identified candidate. 11 C.F.R. § 110.11(a)(2). The
9 communication must disclose who paid for the communication and whether it was authorized by
10 a candidate, an authorized political committee of a candidate, or its agents.
11 2 U.S.C. § 441d(a)(1)-(3); 11 C.F.R. § 110.11(b)(1)-(3). For printed communications, the
12 required disclaimer information must be printed in a box in sufficiently-sized type and with
13 adequate color contrast. 2 U.S.C. § 441d(c); 11 C.F.R. § 110.11(c).

14 1. Pamphlets Distributed by the Committee

15 First, Complainant alleges that the Committee distributed "campaign literature" and
16 failed to place its disclaimer language in the required box and to state whether the
17 communication was authorized by the candidate or committee. Compl. at 2, Exs. B1-B4. The
18 communications appears to be in the form of pamphlets; these exhibits provided by Complainant
19 appear to show the front and back of two different communications. *Id.*

20 Exhibit B1 contains the caption "Liberty and Justice for All Mike Moon for Congress"
21 and contains a picture of the Moon family on the left-hand side of the communication; language
22 on the upper right-hand side of the page reads "Mike Moon Constitutional Conservative for
23 Congress" along with text reading "Missouri's 7th Congressional District." *Id.*, Ex. B1. The

13044342295

1 lower right-hand side of the communication contains the Committee's website address, its
2 address and telephone number, and a disclaimer statement, "Paid for by Mike Moon for
3 Congress," in much smaller type than the rest of the language. *Id.* Exhibit B2 most likely
4 represents the back page of Exhibit B1 since it is roughly the same size as Exhibit B1. Exhibit
5 B2 contains the caption "MIKE MOON STANDS STRONG ON FREEDOM PRINCIPLES"
6 and lists Moon's stance on issues such as agriculture, defense, social security, the Second
7 Amendment, and governmental authority. *See* Compl., Exs. B1-B2.

8 Exhibit B4 appears to represent the front page of a second communication, and Exhibit
9 B3 the back page. The front page contains the caption and information regarding Moon's pledge
10 if elected to office. *Id.*, Exs. B3-B4. At the very bottom of the page in much smaller print is text
11 reading, "Paid for by Mike Moon for Congress." *Id.* The back page contains a list of legislation
12 that Moon's opponent, Billy Long, voted for and that are "against the Constitution." *Id.*, Ex. B3.
13 A statement at the bottom of the page says, "Vote Mike Moon on August 7th" along with the
14 Committee's campaign website and address. *Id.* There are no visible postmarks on the
15 literature, which suggests they were likely circulated by hand, not mailed. *Id.*, B1-B4.
16 Complainant asserts that Moon was observed handing out one of more of these communications
17 at the Rally for Common Sense. Compl. at 2, Exs. B1-B2.

18 The only information regarding distribution of the pamphlets is the Complaint's assertion
19 that Moon was seen with the pamphlets at the Rally for Common Sense. Compl. at 2. Moon and
20 the Committee acknowledge that the Committee failed to place the disclaimer in a printed box
21 set apart from the other contents of the literature, as required by the Act, but claim that the
22 literature included the appropriate "paid for by" language. Moon Resp. at 2; Committee Resp. at

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1 1. The Committee's acknowledgement of the insufficient disclaimers is a strong indication that
2 it was responsible for the distribution of the campaign literature.¹³

3 It is likely that the Complaint's assertion, that Moon may have distributed the materials
4 himself on a limited basis, is accurate. But it also appears likely that the costs of production
5 associated with the pamphlets were *de minimis*. Accordingly, we recommend that the
6 Commission exercise its prosecutorial discretion and dismiss the allegation that the Committee
7 failed to affix an appropriate disclaimer that was contained in a printed box as required by
8 2 U.S.C. § 441d.¹⁴

9 2. Billboard Advertisement

10 The second disclaimer allegation is that the 12 ft. by 8 ft. billboard, purportedly posted by
11 the Committee, containing the language "MIKE MOON FOR U.S. CONGRESS 7TH District,"
12 and providing the Committee's website, was posted with a disclaimer stating "Paid for by Bob
13 Estep" that was not "clear and conspicuous" as required by the Act and regulations. Compl. at 2,

¹³ We note that neither Moon nor the Committee's responses provide information regarding the method of distribution for the literature, the quantity distributed, or the costs associated with the creation or distribution of the literature. See Moon Resp. at 1; Committee Resp. at 1. In reviewing the Committee's disclosure reports for the 2012 election cycle, we are not able to determine which disbursement(s), if any, could apply to the campaign literature. See Committee Disclosure Reports.

¹⁴ Pamphlets appear to fall within the definition of public communication as "any other general public political advertising" and would therefore require disclaimers when distributed by a political committee. See 11 C.F.R. 110.11(a)(1). Pamphlets, further, are similar to those items on an enumerated list of printed communications for which Commission regulations set out specific disclaimer regulations. See 11 C.F.R. § 110.11(c)(2)(i) ("[A] disclaimer in 12-point satisfies the size requirements . . . when it is used for signs, posters, flyers, newspapers, magazines, or other printed material."). In a post-BCRA, MUR, however, the Commission split as to whether a handbill is a "public communication" under 2 U.S.C. § 431(22). Three Commissioners reasoned that the Act distinguishes between two categories of communications, "pins, bumper stickers, handbills, brochures, posters and yard signs" and "public communications" such as "a communication by means of any broadcast, cable, . . . and general public communications or political advertising." Compare 2 U.S.C. 431(8)(B)(x) with 2 U.S.C. 432(22); see Statement of Reasons, Comm'r's Toner, Mason, and von Spakovsky at 4-5, MUR 5604 (Mason). These three Commissioners reasoned that because handbills are more like the former category than the latter, handbills are not "public communications." *Id.* Three Commissioners, however, disagreed, noting that "[a] blanket exclusion of handbills from the definition of 'public communication' would also be inconsistent with many [Commission] regulations," including 110.11(e) and 110.11(f). See Statement of Reasons, Comm'r's Lenhard, Walther, and Weintraub at 3-4, MUR 5605 (Mason).

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1 Exs. C1-C3. As stated in the Complaint, *see* Compl. at 2-3, the Committee reported the receipt
2 of the in-kind contribution totaling \$1,532.00 on its July 2012 Quarterly Report. *See* July 2012
3 Quarterly Report (Itemized Receipts) at p. 3 (filed on Jul. 14, 2012). The exhibits provided by
4 Complainant represent various pictures of one campaign sign, which show that the disclaimer
5 language "Paid for by Bob Estep" is in the far bottom right-hand corner of the billboard in much
6 smaller print than the other content of the billboard. *Id.*

7 Moon responds that the billboard sign was paid for by Bob Estep, the printer added the
8 "paid for by" language to the sign, that the signage contained the appropriate disclaimer
9 language, and that it was properly reported by the Committee. Moon Resp. at 2.

10 We conclude that the billboard constitutes a public communication because the billboard
11 is an outdoor advertising facility and that it required a disclaimer because it contained express
12 advocacy ("Mike Moon for U.S. Congress 7th District") pursuant to 11 C.F.R. § 100.22(a). *See*
13 2 U.S.C. § 441d; 11 C.F.R. § 100.26. Estep paid for the communication that appears to have
14 been authorized by the Committee. The regulations provide that a communication paid for by a
15 person and authorized by a committee must contain disclaimer language set apart in a printed
16 box with the effect that it is clear and conspicuous to the reader. 11 C.F.R. § 110.11(b)(2),
17 (c)(2)(II).

18 The disclaimer language is not sufficient. It does not state that the Committee authorized
19 the communication, and it is not contained in a printed box set apart from the other content of the
20 communication in adequate print type. But the violations are technical in nature and the
21 information provided could be viewed as sufficient to inform the public of the person responsible
22 for the communication. Thus, we recommend that the Commission exercise prosecutorial
23 discretion and dismiss the allegation, pursuant to *Heckler v. Chaney*, that Estep failed to affix the

13044342298

1 appropriate disclaimer to the billboard. *See* MUR 6252 (Otjen) (EPS Dismissal) (dismissing
2 Complaint on insufficient disclaimer because the advertisements contained information
3 indicating that the candidate authorized the communications). We further recommend that the
4 Commission caution Estep regarding the Act's disclaimer requirements.

5 3. Hand-Painted Committee Signs

6 The third disclaimer allegation is that campaign signs posted by the Committee did not
7 contain any disclaimer and that the Committee failed to report expenditures made in connection
8 with the signs in violation of 2 U.S.C. §§ 441d and 434(h). Compl., Exs. D1-D5. All of the
9 signs appear to be the same and say "Mike Moon for U.S. Congress." None of the signs has a
10 disclaimer. *Id.*

11 Moon responds that the signs were hand-painted and that he "overlooked" the need for
12 disclaimers. Moon Resp. at 2. The Responses do not address whether the Committee reported
13 any expenditures in connection with the signs, and we are unable to determine, by reviewing the
14 disclosure reports, whether it did so. Moon Resp. at 2; Committee Resp. at 1.

15 Based on the available information, we conclude that the campaign signs constitute
16 public communications because they are distributed through an outdoor advertising facility and
17 that they required a disclaimer because they were made by the Committee. 2 U.S.C. § 441d;
18 11 C.F.R. § 110.11(a).

19 The Committee acknowledges that it failed to affix a disclaimer to the signs. But because
20 the signs appear to have been hand-painted, the amount of money involved in creating these
21 signs was likely *de minimis*. Accordingly, we recommend that the Commission exercise its
22 prosecutorial discretion and dismiss these allegations. *See Heckler v. Chaney; see also* MUR
23 6252 (Otjen).

13044342299

1 4. Pocket Constitution

2 The fourth disclaimer allegation pertains to pocket constitutions that were allegedly paid
3 for and authorized by the Committee. The Complaint alleges that they failed to include the
4 proper disclaimer language and the Committee failed to report the costs as an expenditure or as
5 an in-kind contribution. Compl. at 3, Ex. F.

6 A review of the pocket constitution indicates that it was not created by the Committee but
7 rather likely purchased for the purpose of distribution. The lack of a postmark indicates that the
8 communication was not mailed but most likely handed out to potential voters.¹⁵ The back of the
9 pocket constitution contains a sticker saying "Mike Moon for U.S. Congress," along with the
10 Committee's website and campaign address. Compl., Ex. F.

11 While Moon and the Committee do not address the disclaimer allegation, they state that
12 the Committee reported, in its operating total expenditure on the July 2012 Quarterly Report, an
13 un-itemized \$220 expenditure in connection with the pocket constitution. Moon Resp. at 2;
14 Committee Resp. at 1. They also state that the Committee is willing to amend the report to
15 itemize the expenditure, if required. *Id.*

16 Based on the available information, it appears that the pocket constitution was handed out
17 on behalf of the Committee, much like flyers or pamphlets, and could fall into the category of
18 "general public political advertising" and therefore be a public communication. 11 C.F.R.
19 §§ 100.26.

20 The Commission, however, need not address the issue of whether the pocket constitution
21 constitutes a public communication given that the Committee acknowledges distributing the

¹⁵ In Complaint Exhibit A2, submitted in connection with the Rally's vendor's booth, there is a picture of Moon with another individual identified as William Looman. Moon appears to be holding the same type of pocket constitution referred to in Complaint Exhibit F.

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1 material and has indicated that it spent only \$220 in connection with the material. *See* MUR
2 6256 (Babich). Thus, we recommend that the Commission exercise its prosecutorial discretion
3 and dismiss the allegation that the Committee failed to provide the proper disclaimer language in
4 violation of 2 U.S.C. § 441d and failed to properly report the costs associated with the pocket
5 constitution in violation of 2 U.S.C. § 434(b). *See Heckler v. Chaney*.

6 5. Window Decals

7 Fifth, the Complaint alleges that the Committee distributed public communications in the
8 form of window decals without proper disclaimers. Images of the decals were posted on the
9 Committee's website. Compl. at 4, Ex. I. The alleged window decals say "Mike Moon for
10 Congress." *Id.* Moon denies that the Committee purchased window decals.¹⁶ Moon Resp. at 2.

11 There is no available information to suggest that the Committee distributed window
12 decals as alleged. Even if the Committee did distribute window decals, Commission regulations
13 state that the disclaimer provisions do not apply to items such as bumper stickers, pins, buttons,
14 and similar small items upon which a disclaimer cannot be conveniently printed. 11 C.F.R.
15 § 110.11(f)(1)(i). Window decals, similarly, are small items exempt from disclaimer
16 requirements. Accordingly, we recommend that the Commission find no reason to believe that
17 the Committee violated 2 U.S.C. § 441d with respect to the alleged window decals.

18 D. **Apple iPad**

19 Complainant alleges that the Committee failed to report the receipt of an Apple iPad 2,
20 valued at \$399, as an in-kind contribution in violation of 2 U.S.C. § 434(b). Compl. at 3-4.
21 Moon responds that the iPad was purchased on August 11, 2012, and that the Committee would

¹⁶ We reviewed the Committee's website, but did not find any images that appeared to be window decals. *See* <http://www.mikemoonforecongress.com> (last viewed on Jan. 22, 2013).

1 report the expenditure in its next disclosure report, the October 2012 Quarterly Report. Moon
2 Resp. at 2. The Committee did not respond to this particular allegation. Committee Resp. at 1.

3 A review of the Committee's October 2012 Quarterly Report indicates that it reported
4 making a disbursement totaling \$428.83 on August 10, 2012, at WalMart for a fundraiser. See
5 October 2012 Quarterly Report (Itemized Disbursements) at p. 4 (filed on Oct. 15, 2012).

6 Although the Responses do not specifically describe the purpose of the WalMart expenditure,
7 and we cannot conclusively determine whether this particular disbursement was for the iPad, the
8 expenditure is within the price range for the the least expensive version of the iPad, and
9 purported date of purchase. Moon Resp. at 2.

10 Based on the available information, we recommend that the Commission find no reason
11 to believe that the Committee violated 2 U.S.C. § 434(b) by failing to report the disbursement in
12 connection with the iPad.

13 **E. Bob Estep Communication**

14 The Complainant alleges that Estep failed to include a disclaimer on a communication
15 hand-painted on the side of his tractor trailer advocating the election of Moon; that Estep
16 potentially made an excessive in-kind contribution to the Committee in connection with the
17 communication; and that the costs associated with the use of Estep's tractor trailer were not
18 reported as an in-kind contribution by the Committee. Compl. at 3, Exs. E1-E2. The tractor
19 trailer has an advertisement that covers the entire length of one side and reads "Mike Moon for
20 U.S. Congress 7th District" and "MikeMoonforCongress.com." *Id.*, Exs. E1-E2.

21 Moon responds that the trailer, owned by Estep, was hand-painted with a "disclaimer
22 added"; that Estep purchased the paint and supplies and hired an individual to paint the trailer;

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1 and that Estep provided the Committee with the costs, which the Committee reported. Resp. at
2 2.

3 The Committee disclosed the receipt of an in-kind contribution totaling \$285 from Estep
4 on its October 2012 Quarterly Report that appears to be in connection with this communication.
5 See October 2012 Quarterly Report (Itemized Disbursements) at p. 2 (filed on Oct. 15, 2012).
6 Estep responds that, acting on advice from an unnamed individual, a disclaimer was affixed to
7 the tractor trailer with a "wide tipped marker." Estep Resp. at 1. Estep's response implies that
8 the communication was not affixed to the communication at the outset but added at a later date.
9 *Id.*

10 The advertisement constitutes a public communication because it is contained on an
11 outdoor advertising facility, much like a billboard. It requires a disclaimer because it includes
12 express advocacy ("Mike Moon for Congress 7th District"). See 11 C.F.R. § 100.22(a);
13 11 C.F.R. § 110.11(a)(2). Since it appears that Estep paid for the advertisement and that the
14 Committee authorized the communication, Estep was required to affix a clear and conspicuous
15 disclaimer, contained within a printed box separate from the other contents of the communication
16 indicating that Estep paid for the communication and that it was authorized by the Committee.
17 11 C.F.R. § 110.11(b)(2), (c)(1), (c)(2)(ii).

18 The disclaimer placed on the tractor trailer was insufficient: it did not contain candidate
19 or committee authorization language, and it was not contained in a printed box set apart from the
20 other contents of the communication. *Id.*

21 Nonetheless, taking into account Estep's attempt to address the issue by affixing a
22 disclaimer, albeit an inadequate one, and the modest amount of money involved (\$285), we
23 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation as

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1 to Estep pursuant to *Heckler v. Chaney*. See MUR 6252 (Otjen). We further recommend that the
2 Commission caution Estep regarding the Act's disclaimer requirements.

3 As to the allegation of Estep's making an excessive in-kind contribution, the
4 Committee's disclosure reports indicate that Estep made three contributions to the Committee:
5 one for \$1,532, one for \$200, and a third for \$285, aggregating to \$2,017.¹⁷ See July Quarterly
6 Report (Itemized Receipts) at p. 1, 3; October 2012 Quarterly Report (Itemized Receipts) at p. 1.
7 (filed on Jul. 14, 2012 and Oct. 15, 2012). Therefore, we recommend that the Commission find
8 no reason to believe that Estep made and the Committee received an excessive in-kind
9 contribution in violation of 2 U.S.C. § 441a.

10 As to the allegation that the value of the use of the tractor trailer was not reported by the
11 Committee as an in-kind contribution, the available information indicates that the Committee
12 reported the contribution. Therefore, we recommend that the Commission find no reason to
13 believe that the Committee failed to report the value of the use of Estep's tractor trailer in
14 violation of 2 U.S.C. § 434(b).

15 **F. Eric Wilber's Newspaper Advertisement**

16 Complainant alleges that Eric Wilber paid for a newspaper advertisement placed in
17 Springfield, Missouri's *Community Free Press* from July 25-August 7, 2012, advocating Moon's
18 candidacy, failed to report it as an independent expenditure and failed to provide the proper
19 disclaimer information. Compl. at 4, Ex. H.

20 Wilber responds that he was a volunteer for the Moon Committee and received two calls
21 from Gregg Hansen, a *Community Free Press* representative, inquiring whether Moon was
22 interested in placing an advertisement. Wilber Resp. at 1. Moon informed Wilber that the

¹⁷ The in-kind contribution totaling \$1,532 was in connection with the billboard discussed earlier in the Report in section II.C.

1 Committee did not have sufficient funds to pay for an advertisement. *Id.* When Hansen called
2 again regarding a less expensive advertisement, Wilber subsequently called Hansen back and
3 responded that the Committee did not have the funds to pay for the ad and asked if he could pay
4 for the advertisement himself. *Id.* Upon learning that he could do so, Wilber agreed to place the
5 advertisement with the understanding that it would be his expenditure. *Id.* Wilber does not
6 indicate whether Moon had any knowledge that Wilber was planning to place an advertisement.

7 The newspaper advertisement reads "Moon for Congress" and states in the upper left-
8 hand corner, "Paid for by Citizen Eric Wilber."¹⁸ See Compl., Ex. H. According to Wilber, he
9 inquired as to the type of disclosure information required, but Hansen was unable to provide any
10 guidance. Pointing to his status as a political novice, Wilber says he was unaware that any
11 contact information needed to be placed on the advertisement. *Id.* The newspaper invoiced the
12 Committee for the advertisement, but Wilber paid it. *Id.*; at Attachment (copy of invoice).
13 Wilber states that he did not report the expenditure because it was below the Commission's \$250
14 threshold and, even if it were not, the report would not have been due at the time of the
15 Complaint. *Id.* at 2. Moon responded that the advertisement was paid for on July 25, 2012, and
16 would be reported in the next quarterly report. The Committee, on its October 2012 Quarterly
17 Report, disclosed its receipt of a \$232 in-kind contribution for "advertising" from Wilber on July
18 25, 2012. See October 2012 Quarterly Report (Itemized Disbursements) at p. 2 (filed on Oct. 15,
19 2012).

20 The Committee properly reported newspaper advertisement as an in-kind contribution.
21 We therefore recommend that the Commission find no reason to believe that Wilber violated

¹⁸ See also <http://www.cfbmidweek.com/weeks/IssuePDFs/vol10i15web.pdf> (last accessed on Jan. 22, 2013).

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1 11 C.F.R. § 109.10 by failing to file an independent expenditure in connection with the
2 newspaper advertisement.

3 The advertisement did not contain an adequate disclosure. The advertisement constitutes
4 a public communication because it was distributed in the newspaper. 11 C.F.R. §§ 100.26,
5 110.11. It required a disclaimer because it said "Moon for Congress" and therefore was express
6 advocacy under 11 C.F.R. § 100.22(a). The advertisement contained language indicating that
7 Wilber paid for it but did not contain language providing Wilber's permanent street address,
8 telephone number or language indicating that it was not authorized by a candidate, committee or
9 political party as required by the regulations. 11 C.F.R. § 110.11(c)(3).

10 But the disclaimer information in the advertisement provided the public with notice as to
11 who was responsible for the advertisement and the amount of money involved (\$232) was *de*
12 *minimis*. We therefore recommend that the Commission exercise its prosecutorial discretion, and
13 dismiss the allegation that Wilber violated the disclaimer provisions pursuant to *Heckler v.*
14 *Chaney*. We further recommend that the Commission caution Wilber regarding the Act's
15 disclaimer requirements.

16 III. RECOMMENDATIONS

- 17 1. Dismiss the allegation that Matthew Canovi and Canovi & Associates made and the
18 Committee accepted un-reported in-kind contributions in the form of advertisements
19 on Matthew Canovi's website.
20
- 21 2. Dismiss the allegation that Mike Moon for Congress and Craig Comstock in his
22 official capacity as treasurer failed to place proper disclaimers on advertisements
23 placed on Matthew Canovi's website.
24

3. Find no reason to believe that Journal Broadcast Corporation, Mathew Canovi, and Canovi & Associates made and Mike Moon for Congress and Craig Comstock in his official capacity as treasurer accepted prohibited and/or excessive in-kind corporate contributions in violation of 2 U.S.C. §§ 441a and 441b.
4. Dismiss the allegation that Common Sense Exchange Group d/b/a Rally for Common Sense and Jonica Hope made and Mike Moon for Congress and Craig Comstock in his official capacity as treasurer accepted a prohibited in-kind corporate contribution; and dismiss the allegation that C. Michael Moon in his individual capacity knowingly accepted a prohibited in-kind corporate contribution.
5. Dismiss the allegations that Mike Moon for Congress and Craig Comstock in his official capacity as treasurer violated 2 U.S.C. § 441d by failing to place the proper disclaimers on its campaign literature and signage.
6. Find no reason to believe that Mike Moon for Congress and Craig Comstock in his official capacity as treasurer violated 2 U.S.C. § 441d by failing to place the proper disclaimer language on window decals.
7. Dismiss the allegation that Mike Moon for Congress and Craig Comstock in his official capacity as treasurer failed to report the making of expenditures and the receipt of in-kind contributions in connection with its campaign literature.
8. Find no reason to believe that Mike Moon for Congress and Craig Comstock in his official capacity as treasurer violated 2 U.S.C. § 434(b) by failing to report the receipt of an in-kind contribution in the form of an iPad.
9. Dismiss the allegation that Bob Estep failed to place the proper disclaimer on its public communication displayed on a tractor trailer.
10. Find no reason to believe that Eric Wilber violated 11 C.F.R. § 109.10 by failing to report an independent expenditure in connection with the public communication in the form of a newspaper advertisement; and dismiss the allegation that Eric Wilber violated 2 U.S.C. § 441d in connection with the newspaper advertisement.
11. Approve the appropriate letters.
12. Close the file.

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2/15/2013
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